IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

Crl.MC.No. 3620 of 2007()

AGAINST THE JUDGEMENT/ORDER IN CRA.2004/2004 Dated 11/08/2005
CC.182/1997 of CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA

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PETITIONER: ACCUSED

MOHAN, PROPRIETOR,
SREE LAKSHMI MATCH WORKS,
PUTHENKULANGARA HOUSE, MUTTOM P.O.,
THODUPUZHA.

BY ADV. SRI.P.K.SOYUZ

RESPONDENTS: COMPLAINANT

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1. KHADEEJA IBRAHIM, THELLIKUNNEL HOUSE,
MUTTOM, THODUPUZHA.

2. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

R1 BY ADV. SRI.K.R.SUNIL
SRI.SUBRAMANIAN POTTI.R
R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3620 of 2007

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Dated this the 5th day of December, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I. Act. He was initially found guilty, convicted and sentenced by the trial court. The learned Sessions Court, in appeal, set aside the verdict of guilty, conviction and sentence. Later, this Court by Annex.A3 judgment in appeal against acquittal set aside the judgment of acquittal passed by the Sessions Court and restored the verdict of guilty, conviction and sentence of the trial court. The petitioner now faces a sentence of R.I. for a period of two months and to pay a fine of Rs.80,000/- In default of payment of fine, he is sentenced to undergo R.I. for a further period of one month. Out of the fine amount, an amount of Rs.75,000/- is directed to be paid to the complainant as compensation.

2. The petitioner/accused and the first respondent/ complainant have now come before this Court to report that the

matter has been settled between them amicably and the complainant has compounded the offence under Section 138 of the N.I. Act committed by the petitioner herein.

3. **Sabu George** v. **Home Secretary** (2007 (1) KLT 982) is authority for the proposition that a composition subsequent to the finality of the verdict of guilty, conviction and sentence passed by this Court can also be accepted in an appropriate case in the interests of justice, subject to appropriate conditions. If the composition were not accepted, the petitioner herein will be compelled to undergo the substantive sentence of R.I. for a period of two months.

4. The petitioner and the first respondent have appeared before me through counsel. A joint application for composition duly signed by the rival contestants and counter signed by their counsel has also been filed. The counsel for the first respondent/complainant Sri. K.R. Sunil confirms that the matter has been settled. He vouches for the signature of the complainant in the joint application for composition.

5. I am satisfied that the parties have settled their disputes and the first respondent has compounded the offence committed by the petitioner. I am satisfied that an amount of Rs.75,000/- has been paid by the accused to the complainant. In these circumstances, I am of the opinion that this is an eminently fit case where the dictum in **Sabu George** can safely be followed and appropriate directions issued under Section 482 Cr.P.C. The judgment which now remains clearly shows that the accused has the liability to pay an amount of Rs.5,000/- to the State. The petitioner/accused undertakes to pay the said amount before the trial court within a period of 30 days.

6. This Crl.M.C. is accordingly allowed. It is directed that the substantive sentence of R.I. for a period of two months imposed on the petitioner shall stand set aside. The direction for payment of fine shall also stand modified and it is directed that it is sufficient that the petitioner pays an amount of Rs.5,000/- as fine before the learned Magistrate within a period of one month from this date. In the event of

default, the default sentence imposed by the trial court and upheld by this Court to undergo imprisonment for one month shall be executed by the learned Magistrate thereafter. The petitioner shall appear before the learned Magistrate on 3.1.2008 to pay the amount or to undergo the default sentence.

(R. BASANT)
Judge

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